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HUMAN RIGHTS COMMITTEE

Fifty-second session

SUMMARY RECORD OF THE 1359th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 17 October 1994, at 3 p.m.

Chairman: Mr. ANDO

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The meeting was called to order at 3.20 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4)

Initial report of Nepal (CCPR/C/74/Add.2; HRI/CORE/1/Add.42)

1. At the invitation of the Chairman, Mr. Prasad Lacoul and Mr. Babu Dhakal (Nepal) took places at the Committee table.

2. The CHAIRMAN welcomed the delegation of Nepal, explained the procedure to be followed, and invited the head of the delegation to present and update the initial report (CCPR/C/74/Add.2).

3. Mr. PRASAD LACOUL (Nepal) said that Nepal had submitted its initial report, due in 1992, in 1994. The delay in submission had resulted from the legislative and administrative arrangements required after the recent political changes in the Kingdom. The report provided a wide range of information on the human rights safeguards set out in the Constitution, adopted in 1990, and in other domestic legislation. Constitutional and legal remedies had been provided to ensure enjoyment of all basic human rights. Those measures demonstrated Nepal's firm commitment to the protection and promotion of human rights and to the concepts of an independent judiciary and the rule of law. The initial report should be read in conjunction with the core document (HRI/CORE/1/Add.42), which provided general information on the land, people, political structure and legal system of Nepal.

4. The preamble to the Constitution set out a number of fundamental elements not subject to repeal or amendment: sovereignty of the people, constitutional monarchy, guarantee of basic human rights, a multiparty democracy and a parliamentary system of government. Part 3 of the Constitution, which could be termed the Bill of Rights, codified all the rights and freedoms embodied in the international instruments to which Nepal was a party. Among the most important factors acknowledged as necessary for the protection and promotion of human rights were legislative measures and their implementation. The functions of the executive, the judiciary and the legislature were very clearly spelled out in the Constitution.

5. In some cases the Supreme Court had handed down its interpretation of clauses of the Constitution through the process of judicial review. The independence of the judiciary was maintained through provisions on the appointment of judges and working procedures. Judges of district and appellate courts were appointed by the King on the recommendation of the Judicial Council and Supreme Court judges were appointed on the recommendation of the Constitutional Council. Under article 88 of the Constitution, the Supreme Court had extraordinary jurisdiction to hear cases involving habeas corpus and other writs, and the right to constitutional remedies was likewise invoked under that jurisdiction. The Supreme Court had handed down verdicts in cases of illegal or arbitrary detention resulting on many occasions in the release of the detainees.

6. The Nepalese Government employed various policy measures to ensure full enjoyment of fundamental rights and freedoms. The Directive Principles of State policy laid emphasis on the promotion of general welfare and the protection of human rights. No one was to be deprived of the rights to equality before the law and to equal protection under the law, which were guaranteed by the Constitution and the Civil Liberties Act. Any infringement of those rights was punishable, with specific penalties being mentioned in the chapter on public order in the Muluki Ain (the Law of the Realm).

7. As required by article 4 of the Covenant, article 115 of the Constitution dealt with emergency situations. Once a state of emergency had been declared, it could be extended for up to one year if the House of Representatives deemed it necessary. During such periods, some rights and freedoms could be suspended, but there were non-derogable rights that could not - the right to equality, the remedy of habeas corpus, rights relating to criminal justice, cultural and educational rights, the right to religion, the right to be free from exploitation and the right not to be exiled.

8. The rights of women had been given due attention, taking into account the special needs of women in society. Under the Directive Principles of State policy, the State was required to involve the female population to a greater extent in national development. In elections to the House of Representatives, at least 5 per cent of the total number of candidates from any given party must be women.

9. The right to life had been guaranteed and no one was to be deprived of personal liberty. Capital punishment could not be incorporated in Nepalese legislation, and the death penalty had been abolished.

10. Turning to article 7 of the Covenant, he said that Nepal was bound by the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as a State party to that instrument. It had submitted its initial report to the Committee against Torture in April 1994. Acts of torture committed during investigation or trial were punishable by law, and anyone subjected to such treatment would be awarded compensation. Parliament was currently considering a bill on compensation for torture victims.

11. Forced labour and servitude were against the law. Article 20 of the Constitution prohibited trafficking in human beings, slavery, serfdom or forced labour in any form. Trafficking in human beings was punishable by imprisonment of up to 15 years; enslavement was punishable by imprisonment ranging from 3 to 10 years, and the victim was entitled to compensation from the offenders.

12. The right to freedom and security of person was provided for by the Constitution and guaranteed by other legislation. No person was to be detained without being informed of the alleged offence. No one was to be held under preventive detention unless there were sufficient grounds or an immediate threat to the sovereignty, integrity or law and order of Nepal. A person illegally detained was entitled to reasonable compensation, to be decreed by a court of law. The treatment of prisoners was covered by legislation and regulations aimed at ensuring the most humane treatment

possible. Men and women in custody and in prison, and offenders in civil and criminal cases, were to be held separately. Prison personnel violating the Prisons Act or other relevant legislation or failing to perform the duties set forth in the Act were liable to punishment.

13. Freedom of movement, free choice of residence and the right to practise religion were all provided for by the Constitution and other legislation, and there was no impediment to the enjoyment of such rights and freedoms. The various communities in Nepal had the right to preserve their language, script and culture and to operate schools providing education in that language up to the primary-school level. Article 19 of the Constitution provided that everyone had the freedom to profess and practise his own religion and that every religious denomination had the right to maintain its independent existence and to manage and protect its religious places and trusts. Religious tolerance and harmony were long-standing features of Nepalese society, and no communal violence had occurred in the country.

14. The rights of the child and child welfare were ensured through various legislative acts and development policy measures. Nepal was a party to the Convention on the Rights of the Child and was preparing a report on its implementation. Child labour was unlawful in Nepal. The Government was aware that there were problems in that area, however, and had initiated multisectoral programmes to find a solution.

15. Popular participation in public affairs and national development was ensured through the election of representatives to Parliament, a development planning system that worked from the bottom up, a multiparty democratic structure and a market-oriented economy. No citizen was discriminated against on grounds of religion, race, sex, caste, tribe or ideological conviction. On reaching the age of 18, every citizen was entitled to exercise his right of franchise. Marriage had to be voluntary, and forced marriage was subject to annulment. A man aged 21 and a woman aged 18 had the right to marry by mutual consent.

16. Citizens enjoyed freedom of association, freedom to organize political parties and freedom of peaceful assembly. The Trade Union Act provided for vocational and professional rights and benefits for workers in any institution or corporation.

17. Nepal was fully committed to the principles of the Charter of the United Nations and the Universal Declaration of Human Rights. Its policy was to cooperate with United Nations human rights bodies and other institutions. It had furnished various comments and opinions on the reports of Special Rapporteurs, as well as replies on individual cases.

18. Until the mid-twentieth century, while the outside world had been opening up to industrial technology and science, Nepal had been a secluded place governed by the conservative Rana regime, with no written Constitution or fundamental rights and freedoms. The year 1951, when the people's revolution had liberated the country, had been a turning-point in Nepal's history. Subsequently a number of Governments incapable of establishing a truly democratic society had been formed. From 1959 to 1960, there had been a

short-lived experiment in parliamentary government based on popular election and adult franchise under a Constitution. For 30 years thereafter, the country had been governed under the partyless Panchayat system, and the people had had only limited rights.

19. The history of constitutional development in Nepal was thus not long enough to have engendered such deep roots of democracy as in the industrialized and developed countries. After the popular movement of 1990, however, when the partyless system had been dissolved and a new democratic Constitution promulgated, Nepal had truly embarked upon the path of democracy. A popularly elected Government had been formed in 1991 and a new general election was to be held on 15 November 1994. That election had been necessitated by the dissolution of the lower house of Parliament when the Government had not received a majority in voting on the budget as set out in the speech from the throne in July 1994. The dissolution of the lower house and the mid-term elections, which had been proclaimed by the King on the advice of the Prime Minister, had been challenged in the Supreme Court. That exercise of judicial review had furthered the cause of democracy in Nepal.

20. He hoped his comments had demonstrated the momentum of popular participation, transparency and the rule of law in Nepal that was directing the country towards fulfilment of the goals of the Covenant and other international instruments. As a least developed and land-locked country, Nepal had an uphill task in ensuring not only civil and political rights but economic and social rights as well. However brief its experience in working towards those goals, the country had been able to move forward with genuine commitment. His delegation would take full advantage of the counsel and information to be provided by the Committee and would be glad to respond to any queries on the report.

21. Mr. MAVROMMATIS, referring to the procedure for studying initial reports, said he was convinced a new approach was required. He had serious doubts, moreover, about the advisability of examining an initial report on the first day of a session. Such scheduling prevented Committee members from giving due consideration to the background documentation submitted with the report - the Constitution, for example - and to the abundant relevant information available from other sources.

22. He welcomed the delegation of Nepal, a country exemplifying those developing nations that, upon switching to a democratic form of government, demonstrated their commitment by promptly ratifying numerous international instruments on human rights. The pride of the people of Nepal in their country emerged very clearly from the documents before the Committee.

23. It was unfortunate that the report provided nothing but general information and quotations from the Constitution. It did indicate, however, that Nepal's infrastructure for protecting human rights was still very tenuous. That was why it would have been especially useful for a delegation from the country's capital, instead of from the Permanent Mission in Geneva, to appear before the Committee. The purpose of the Committee's work was not to criticize, but to identify areas where there was room for improvement and

to counsel the Government on how to effect the necessary changes. In drafting the report, more attention should have been paid to the Committee's general comments.

24. There was a definite lack of substantive laws to back up the Constitution and of mechanisms such as legal and administrative remedies, an ombudsman and a human rights commission. Without such means, it would be difficult for the Government to act on complaints of human rights violations. On the other hand, the independence of the Supreme Court was an extremely encouraging feature which augured well for the future.

25. In relation to article 2 of the Covenant, he said the Constitution's mention of caste along with other grounds for prohibited discrimination - sex, race, religion, etc. - was welcome. Criminalizing such discrimination was not sufficient, however: the eradication of caste distinctions was a long and arduous process, and educational measures were needed to change ingrained attitudes. He inquired why a number of important grounds on which the Covenant prohibited discrimination - colour, political opinion and social origin, for example - had been omitted from the Constitution, even though it had been adopted after the promulgation of the Covenant. If the Nepalese authorities had referred to the Committee's general comments on article 26, they would have seen that the requirements regarding prohibition of discrimination went far beyond what was set out in their Constitution - and particularly in its article 11 (2).

26. Safeguarding the independence of the judiciary involved more than ensuring proper procedures for appointment of judges: other considerations, such as security of tenure, also applied. What was the situation in Nepal in that regard? While the Supreme Court had won respect for its independence, were lower courts regarded as being equally independent, and were the Supreme Court's rulings complied with? It was most commendable that in Nepal, any citizen, on any grounds, could challenge the constitutionality of a law before the Supreme Court. But once citizens became fully aware of that right, the Supreme Court's case load was likely to balloon out of control. Administrative and legislative provisions should be adopted to prevent that happening.

27. He asked what effect the prohibition of discrimination on the grounds of caste had had on the right to practise religion. Moreover, there were still a number of legislative provisions that discriminated against women in such matters as marriage and inheritance. The literacy rate for women was far below that for men, and more efforts were clearly needed in that domain.

28. As he understood it, a number of non-derogable rights could be suspended in time of emergency: that constituted a violation of article 4 of the Covenant and should be corrected. He would like to know whether the death penalty had actually been abolished - there were apparently cases still pending in which it could be imposed. Article 6 of the Covenant, on the right to life, did not merely relate to abolition of the death penalty. It involved a whole range of measures to protect the right to life - reducing infant mortality and preventing torture, for example.

29. There was a great deal of information, from non-governmental organizations (NGOs) and other sources, to indicate that torture, extrajudicial executions and disappearances were still occurring in Nepal. There also seemed to be a lack of commitment to investigating allegations of such abuses. Though change could not be achieved overnight, measures must be taken with a view to eliminating those practices. The legislation on torture focused on providing victims with compensation, but that was only one of the concerns that should be met: prevention of the offence and punishment of the culprits were the paramount considerations.

30. He would like to know if legal aid was available in Nepal, in accordance with article 14 of the Covenant. Was it true that, in case of inability to pay a debt, the police kept the individual concerned in custody until he signed a document acknowledging the debt or paid it off? If so, that was fairly harsh treatment, and he would like to know whether anything was being done to alleviate such practices.

31. Paragraph 28 of the report indicated that restrictions could be imposed on freedom of movement and choice of residence in order "to maintain harmonious relations between peoples of various castes, tribes or communities". What did that mean in practice?

32. Mr. EL SHAFEI welcomed the delegation of Nepal and noted the change in the attitude of the Government in cooperating with the international community with regard to the observance and monitoring of human rights practices, as evidenced by the large number of international human rights instruments ratified. The initial report of Nepal was almost two years overdue; it was to be hoped that the second periodic report would be submitted on time so that the dialogue beginning between the Committee and the Government of Nepal could be pursued at reasonable intervals.

33. Although the report and the core document of Nepal provided a good deal of information on the constitutional and legal reforms that had been taking place in the country since 1990, the manner in which the Covenant was being implemented in practice was still far from clear. He inquired whether the Covenant and its Optional Protocols were known in the country, at least to persons involved in law enforcement or those advocating and promoting human rights; how much publicity those documents were receiving; what was the legal status of the Covenant in the legal order of the State; and whether the Act referred to in paragraph 12 of the core document, which provided that an international treaty to which the Kingdom was a party prevailed over Nepalese law in cases of divergence, had been tested and, if so, whether the delegation could give the Committee an example.

34. Certain existing laws in Nepal could be thought inconsistent with the provisions of the Covenant. In particular, paragraph 11 of the initial report failed to make clear whether rights non-derogable under article 4 of the Covenant, such as the rights under articles 6, 7, 8 (1) and 8 (2), 11, 15, 16 and 18, could be suspended under article 115 of the Constitution dealing with emergency situations of the State.

35. He would appreciate some elucidation of the information given in paragraph 12 of the report, and particularly in its second sentence. The Committee would also wish to know whether the House of Representatives had now adopted the bill to provide compensation to victims of torture, referred to in paragraph 17 of the report. Associating himself with the comments made by Mr. Mavrommatis in connection with paragraph 28, he said he found it difficult to reconcile the restriction referred to in article 12 (2) (4) of the Constitution with article 12 (3) of the Covenant. Referring to paragraph 42 of the report, he wondered whether Parliament was now considering the bill to safeguard the right to privacy, and if so, whether the delegation could supply the Committee with the text of the bill.

36. The delegation might also wish to respond to concerns expressed by a number of NGOs regarding allegations of torture of detainees in police custody and of unlawful killings by police during the demonstrations which had taken place in Nepal in June and July 1993 and July and August 1994. Had the offenders been tried following an investigation, and had the victims or their families received compensation? He also referred the delegation to the recent report of the Commission on Human Right's Special Rapporteur on torture (E/CN.4/1994/31), as well as to cases reported by the Commission's Working Group on Enforced or Involuntary Disappearances. Lastly, cases of extrajudicial, summary or arbitrary executions reported to the Commission by the relevant Special Rapporteur suggested violations of a number of articles of the Covenant, relating inter alia to the right to life, the right not to be subjected to torture and the right to a fair and public trial. The delegation might wish to explain whether those were isolated cases and whether they had been duly investigated.

37. Mrs. EVATT also welcomed the delegation of Nepal, but expressed regret at the absence of a representative of the Ministry of Justice. While the initial report contained much welcome and important information about Nepal's transition to multiparty democracy, its ratification of many international instruments, its commitment to the rule of law and the primacy given to international treaties over national law, it suffered from lack of legal detail, especially with regard to the compatibility of Nepalese law with many articles of the Covenant and difficulties encountered in connection with implementation. The Government's failure to involve NGOs in the preparation of the report was also to be regretted.

38. In raising issues of general concern under specific articles of the Covenant, she proposed to focus her remarks on the situation of women in Nepal, a subject on which the report said very little. Information available to the Committee suggested that in many areas Nepalese women did not in fact enjoy equal rights with men. For example, the fact that under article 9 of the Constitution citizenship was acquired by descent from the father but not the mother was inconsistent with the equality provisions in article 11 of the Constitution. So far as the right to life was concerned (art. 6 of the Covenant), it appeared that, contrary to the pattern in virtually all countries in the world, the life expectancy of Nepalese women was less than that of men. Was that the case, and if so, to what was that situation attributable? A lower life expectancy often signalled serious discrimination.

39. So far as education and literacy were concerned, it was reported that the literacy rate for women was only 26 per cent, compared with 57 per cent for men, and that women, particularly in rural areas, often received no education at all. If that was true, the ability of women to enjoy rights under the Covenant such as the rights to vote, to participate in political life and to seek protection of the law when their rights were violated, and generally their capacity to assert their rights, would be seriously diminished. With regard to article 23 of the Covenant it was reported that the marriageable age was not the same for Nepalese men and women, that polygamy and child marriage involving girls as young as 10 still existed, and that a dowry system was still prevalent in some areas. Grounds for divorce were also reported to be narrower for women than for men. Thus, both legal distinctions and practice appeared to show that women were still in an inferior position so far as marriage and the family were concerned.

40. Turning to article 12 of the Covenant, she invited the delegation to comment on reports to the effect that Nepalese women could not pass on their citizenship to a child or spouse and needed the consent of a male guardian to obtain a passport or to travel. Generally speaking, the initial report did not address the question of the right to leave the country and article 12 (2) (d) of the Constitution also failed to cover that right.

41. Contrary to the information given in paragraph 18 of the report with regard to prohibition of slavery, the slave trade or forced labour (art. 8 of the Covenant), it was reported that trafficking in women was rife, that parents sold young women and girls under the age of 16 into lives of sexual slavery, and that many young women were abducted or tricked into entering brothels in India, Hong Kong or the Middle East. Activities of that kind, which were a direct consequence of the inferior status of women in Nepalese society and their lesser educational and employment opportunities, were no doubt illegal and could be prosecuted, but were steps actually being taken to control the border with India so as to protect young Nepalese women? What was being done to secure their return from forced servitude and to rehabilitate them?

42. The question of violence towards women was not mentioned in the report, but she understood it to be a matter of increasing concern to women's rights and human rights groups, which were campaigning for more effective laws against sexual assault crimes. She would be interested to know whether Nepal had taken or intended to take new legal or practical measures to combat all forms of violence against women, whether in the home or as a result of sexual assault or rape.

43. In connection with article 7 of the Covenant, and torture or cruel, inhuman or degrading treatment of women, she referred to two specific cases, one of a woman alleged to have been raped by police officers while in custody and the other of a women reportedly tortured, beaten and threatened with rape while under arrest. Such cases brought into question the effective implementation of articles 7 and 9 of the Covenant. There was also increasing concern over the Government's failure to implement effective laws to make torture a criminal offence or to provide compensation to victims. What investigations and prosecutions had followed the cases she had referred to or

other similar ones? What was being done to prevent torture, and what progress was being made towards making torture a crime and providing for prosecution as well as compensation?

44. Because of inequality, lack of education and access to employment, and vulnerability to sexual abuse, many women in Nepal were exposed to human rights violations in the criminal justice system. That was particularly true of women with unwanted pregnancies as a result of rape or women abandoned and left without means of subsistence by their partners. Abortion was illegal, and the offence of abandonment of a child or infanticide carried a sentence of life imprisonment and forfeiture of property. About two thirds of women in Nepalese jails were said to be imprisoned for those offences. Most of those women had no legal advice or support and no knowledge of their right to appeal. She invited the delegation to comment on those points and to specify for what crimes women in Nepalese jails were imprisoned, how many of them were legally represented, what sentences they had received and how many appeals had been lodged. Was it true that were no women's prisons? She had heard of allegations of sexual assault and suicides resulting from poor prison conditions and of deaths caused by lack of medical services.

45. Her remarks, unfortunately incomplete owing to lack of time, were intended to show that the enjoyment of rights required not only Constitutions and Bills of Rights but also new attitudes and practical measures. Nepal had come a long way, and she hoped that its dialogue with the Committee would encourage further progress for all Nepalese citizens.

46. Mrs. HIGGINS said that she, too, welcomed the opportunity for dialogue with the Nepalese delegation but shared the previous speaker's regret that the delegation did not include a representative from the Ministry of Justice. As already pointed out, the report had been submitted with considerable delay and could not be described as highly informative. However, she was delighted with Nepal's move towards multiparty democracy and its greatly improved Constitution. After noting that article 26 of the Constitution (State policies) actually went beyond the requirement in article 3 of the Covenant, she associated herself fully with the comments made by previous speakers in connection with article 11 of the Constitution (Right to equality). The reference to "general laws" in paragraph 2 of that article was somewhat puzzling. Did it mean that discrimination on grounds of religion, race, sex, caste, tribe or ideological conviction was permitted in the application of specific laws or some other category of laws? Were the instances of discrimination between the sexes cited by Mrs. Evatt considered to fall within the application of specific rather than general laws? As to the right to life (art. 6 of the Covenant), she endorsed the point made by Mr. Mavrommatis that the abolition of capital punishment as set forth in article 12 (1) of the Constitution was only one of the steps towards ensuring enjoyment of the right to life.

47. Turning to the criminal justice provisions in article 14 of the Constitution, she said that she was struck by the absence of any provision designed to ensure the independence of tribunals and, especially, to separate executive from judicial functions. The fact that many judicial duties were performed by persons with authority in local government was a matter of concern. Noting that the question of torture or cruel, inhuman or degrading

treatment was dealt with under the heading of criminal justice, she said that little, if anything, seemed to be done to educate or control prison officers or members of the police, and she associated herself with Mr. Mavrommatis' remarks on that point. Instead of protecting security of person, the police appeared rather to endanger it. What was actually being done to prevent rape, theft of prisoners' property and extrajudicial killings of demonstrators? The fact that the right of habeus corpus was non-derogable was to be admired, but she had information to the effect that, in fact, courts did not have the power to summon the evidence they needed and that the police were not obliged to attend hearings, so that the right of habeas corpus lacked practical effect. In that connection, she remarked that, under the Public Security Act, arrangements could be made for keeping persons under preventive detention in order to maintain security, order and tranquillity. Individuals could also apparently be directed not to remain in the Kingdom of Nepal, a provision which she had difficulty in reconciling with the right against exile set forth in article 21 of the Constitution. The preventive detention order, which apparently emanated from executive rather than judicial authorities, represented a significant intrusion in the rights of the person that was incompatible with the Covenant and, in part, with Nepal's own Constitution.

48. Referring to constitutional article 19 (Right to religion), she inquired whether the reference to a person's freedom to profess and practise "his own religion as handed down to him from ancient times" meant that a convert to a religion that was not traditional - say, Christianity - did not enjoy the freedom to profess and practise it.

49. She was also concerned that the right to privacy under article 22 of the Constitution could be suspended under certain circumstances which were not clearly defined. Under article 115 of the Constitution the right to constitutional remedy and other important rights could be suspended in a state of emergency, and emergency powers could also be invoked by the authorities for reasons of "extreme economic disarray", although such a justification of emergency powers was not recognized by the Covenant and it was not clear how measures such as restricting press freedom or extending preventive detention would help to feed people in times of economic crisis.

50. The report rightly emphasized the importance of the right to self-determination both for Nepal and for other developing countries. In general, the report needed to be made readily available to NGOs to assist them in their work, although direct consultation with NGOs might not be strictly necessary. It was regrettable that the report gave no indication of any follow-up by the authorities to reports of extrajudicial killings, use of excessive force by the police and other abuses, and there was no evidence that investigations had been conducted or sanctions imposed to prevent recurrences. That tended to cast doubt on the reality of the right to freedom of association recognized under article 12 (2) (c) of the Constitution.

51. Lastly, she would welcome an explanation of the wording of the final sentence in paragraph 50 of the report, the correct interpretation of which was not clear.

52. Mr. BAN said that the report was insufficiently detailed and that the delegation's oral introduction had provided little additional information. However, the absence of competent officials from the national capital had clearly posed problems for the Napalese delegation.

53. The fact that Nepal had acceded to the Covenant and the Optional Protocol only a year after going over to a pluralistic parliamentary system was to be welcomed. Nevertheless, the claim made in paragraph 7 of the report that all the necessary constitutional and legislative measures had been adopted to give effect to the rights recognized by the Covenant seemed rather a bold one. He requested more information on the "effective remedy" said to be available to persons whose rights under the Covenant had been violated.

54. The report referred consistently to the rights of citizens, thus creating the impression that in Nepal the rights recognized under the Covenant were enjoyed only by citizens and not by the many foreign nationals resident in the country. If that was the case, it would be against the spirit of the Covenant.

55. Another important area of interest was the dissemination of the Covenant and the Optional Protocol among the general public, on the one hand, and the officials directly responsible for implementing it, on the other. How did the competent authorities disseminate information on the provisions of the Covenant? What measures had been adopted to enhance public awareness of new rights under the Covenant, given the very low literacy rate among the population and the difficulties created by the existence of more than one language group?

56. The issue of castes had been brought up by previous speakers. Although the caste system had been formally abolished in Nepal, the report suggested that de facto caste distinctions still existed. Paragraphs 28 and 49, for example, both referred to "restrictions" which could be imposed on rights in the interests of preserving harmonious relations between peoples of various castes. To what extent were caste distinctions still recognized in fact? How far could the "restrictions" go and what form might they take? Similarly, paragraph 41, which referred to the rights of all citizens to be treated as "persons before the law", indicated that that right was subject to "special restrictions" under a special law. More information on those special restrictions was required.

57. Mr. BRUNI CELLI agreed with previous speakers that the report had failed to address a number of important issues, and asked if, at its next appearance before the Committee, the delegation would be able to provide more detailed information on specific allegations of violations, including torture, disappearances, forced labour and sex discrimination.

58. With regard to the overall form of the report, he noted that it quoted specific legislative acts extensively but failed to give detailed information on what was actually being done to implement the legislation. Nor was any mention made of information submitted by NGOs. The members of the delegation had obviously been at a disadvantage in being unable to call on representatives from, for example, the Ministry of Justice who might be better informed on the situation in the country and have more specialized knowledge

than they themselves. It was to be hoped that in subsequent periodic reports the Government of Nepal would focus less on legislation and more on actual practice and that such reports would be presented by officials directly concerned with the enforcement of human rights. The Centre for Human Rights could provide invaluable assistance in the drafting of reports, and he urged the Nepalese authorities to avail themselves of the Centre's resources.

59. The adoption of a new, progressive Constitution and the creation of a Parliament and a multiparty political system were very positive developments and very propitious for the further enhancement of human rights in the country. Nevertheless, more detailed information was needed on how the new system was actually functioning and what problems still remained, for example, with regard to restrictions on freedom of expression. Similarly, while Nepal's ratification of international human rights instruments clearly signalled a desire to respect human rights, some doubts remained regarding the extent to which domestic law had been brought into line with the provisions of those instruments, and he would welcome more detailed information on that point.

60. Mr. WENNERGREN said that, while the core document and the report gave a clear picture of the overall legislative framework in Nepal, they gave no information on actual practice in the country. The new Constitution was in his view a good and progressive one which appeared to go far towards answering the popular demand for democracy and improved respect for human rights. Nevertheless, while significant progress had clearly been made, much time would be needed before all the provisions of that Constitution could be actually implemented.

61. In particular, the continued recognition of caste distinctions, despite the formal abolition of the caste system, could not be reconciled with the right to equality recognized by article 11 of the Constitution. What was being done by the Nepalese authorities to eliminate caste distinctions in fact as well as in law?

62. Remarking that the Supreme Court appeared vulnerable to pressure from a very powerful Parliament, he asked what safeguards existed to maintain the Court's independence in the face of such pressure.

63. The Constitution gave citizens the right of access to official information, but NGOs had reported that private citizens and even courts still faced great difficulties in obtaining official documents and that there appeared to be a deep-rooted aversion in official circles to making information public. What progress was being made in efforts to improve freedom of information?

64. He also wished to know more about the actual application of the Constitution and the Covenant by the courts and administrative authorities. Could the provisions of the Constitution and the Covenant be invoked and applied directly by the courts and administrative authorities, or was specific legislation needed to give effect to them? Were courts willing to apply the provisions of the Constitution and the Covenant directly? Under the Nepal Treaties Act, the Government was required to take steps to enact implementing

legislation if any international treaty created additional obligations for Nepal; that seemed to him to imply that direct implementation of international instruments in Nepal was not always possible. He hoped the delegation would be able to provide more information on that point.

65. Although article 19 (3) of the Covenant did acknowledge that some curtailment of freedom of expression might be necessary on occasion, acceptable restrictions were very narrowly defined. On the other hand, the exceptions to the prohibition on censorship of news items, articles or other reading material detailed in article 13 (1) of the Constitution of Nepal appeared to be much wider in their application. He requested clarification of the scope of those provisions and asked what policies had been applied in Nepal with respect to restriction of freedom of expression. Furthermore, the reference to registration in article 13 (3) of the Constitution implied that publication of newspapers and periodicals was not permitted without prior registration, which in itself was a form of censorship. What were the preconditions for registration of such publications, under what circumstances could registration be cancelled and what purpose was it intended to serve?

66. Mr. FRANCIS, endorsing the views expressed by previous speakers, said that in the light of the fact that the report was Nepal's first submission to the Committee, it could be considered a good beginning. Nepal would do well, however, to pay due attention to the criticisms made. Country reports should primarily be practical documents indicating how laws were actually being applied. Information should be given, inter alia, about relations between the police and the general public, cases of excessive use of force, prison conditions, treatment of prisoners, the size of the prison population and relative numbers of men and women prisoners, and rehabilitation of offenders.

67. Further to Mrs. Evatt's comments on the situation of women in Nepal, he noted from paragraph 2 of the core document that, although the population was evenly divided between men and women, literacy among men was 54.5 per cent and among women only 25 per cent; in other words, over 6 million women in Nepal could not read or write. Noting the high unemployment figure of 43 per cent given in paragraph 4 of the same document, he said it could be inferred that most unemployment was borne by women. Life expectancy for women was much lower than for men. Women were also differentiated against in marriage, since the minimum legal age for marriage was 18 years for women and 21 for men. The legal provision for representation of women among election candidates was very low - only 5 per cent, according to paragraph 9 of the initial report. Since illiteracy was closely linked to low status, he hoped that forceful measures were being taken in Nepal to increase literacy among women and asked for information on the subject.

68. Mr. PRADO VALLEJO, noting that the present exchange was Nepal's first contact with the Committee, expressed the hope that a fruitful dialogue would be initiated between Nepal and the Committee. The Committee greatly appreciated the progress made recently in Nepal - the restoration of democracy, the introduction of a multiparty system, the adoption of a new Constitution - all of which augured well for respect for basic rights. However, since no countries were exempt from problems on that score, it was

surprising that the report made no mention of any difficulties Nepal was encountering in implementing the provisions of the Covenant. What information was available on the subject had had to be gleaned from other sources.

69. He asked what publicity had been given to the Covenant in Nepal and whether it had been distributed in all the various languages spoken by its peoples. Such action was necessary to inform citizens of their rights and the corresponding safeguards.

70. The report painted a rosy picture of the existing legislation, but there appeared to be a difference between the law as written and as applied in practice. Non-discrimination was a basic right under the Covenant, but women in Nepal appeared to suffer discrimination in a number of areas - most importantly, marriage, inheritance and citizenship. For example, a Nepalese woman who married a foreign man did not enjoy the same citizenship rights as a Nepalese man who married a foreign woman. Were any steps being taken to end such discrimination?

71. Nepal's report had not been made available immediately on publication to NGOs, which had had to wait some considerable time for copies, or to the public at large. Since country reports were not classified documents, there was no reason why they should not be made freely available, particularly to inform citizens of the country concerned how it was performing its international obligations.

72. No investigation of human rights abuses had ever been carried out in Nepal. A report published in 1990 had referred to a number of problems with respect to the police; he asked whether any subsequent action had been taken to remedy that situation. It was a basic obligation of any State to investigate any reports of human rights abuses, to identify the person or persons responsible, to mete out appropriate punishment and to compensate the victims. Since legislation to that effect did not appear to exist in Nepal, he hoped the Nepalese delegation might commend its adoption to the Government. In addition, there appeared to be no legislation to prohibit torture, which seemingly was widespread; it was the State's responsibility to adopt measures to curb such abuses. Discrimination with respect to caste, origin and language also appeared to be common in south-eastern Nepal; he asked what legislation existed to prevent such practices. Although article 4 of the Covenant allowed some derogations in time of public emergency, it countenanced no derogation from article 18, concerning the right to freedom of thought, conscience and religion. Any legislation that restricted that right ought therefore to be amended.

73. Every effort should be made to bring domestic law in Nepal into line with international law as embodied in international human rights instruments, including the Covenant. The right to life being a basic human right under international law, he asked what the Nepalese Government had done to investigate deaths and disappearances, attributed to the police and to prevent their recurrence.

74. The Government should be encouraged to put an end to arrest and imprisonment for debt, which was still practised in Nepal although it was no longer considered a criminal offence in most modern societies and was specifically prohibited by the Covenant (art. 11).

75. Women appeared to suffer discrimination in employment. The ILO had already appealed to Nepal to amend its legislation so as to ensure that the principle of equal pay for equal work was observed and that the provisions of the relevant ILO Convention were complied with.

76. Mrs. EVATT, referring to article 8 of the Covenant, inquired about the existing situation with respect to the practice of debt bondage among the Tharu community, where the Kamalya people were said to have been working for several generations in a state of servitude to landlords to repay loans incurred many years before. What legislative and practical steps were being taken to overcome the problem?

77. With reference to article 10 of the Covenant, she said there was a need for more information on general prison conditions in Nepal and on measures being taken to improve them. For example, there was apparently no segregation between accused and convicted persons in Nepalese prisons; Banke district jail was said currently to be housing 250 prisoners in accommodation intended for 50; and in Dhulikel jail mentally ill prisoners were reportedly kept in appalling conditions and were physically restrained. It would be desirable to set up an independent body to visit and report on prison conditions and to receive any complaints.

78. With reference to article 22 of the Covenant, she asked for clarification of a report that schoolteachers were prohibited from forming trade unions.

79. Further to remarks made by Mrs. Higgins, she requested information on the alleged powers of district officers to detain persons in prison, sometimes for years, on an arbitrary basis. Was any action being taken to curb such powers or to ensure that they were properly supervised?

80. Mr. WENNERGREN, noting that the Supreme Court could comprise up to 14 judges in addition to the Chief Justice, asked what the present size of the Supreme Court was. It would also be useful to have information on the nature of any legal training given to judges appointed to the Supreme Court to fit them for their onerous task.

81. Mr. PRADO VALLEJO said that there appeared to be a contradiction in paragraph 61 of the report, where it was claimed that the concept of minority and majority did not exist and at the same time that every person was free to enjoy his own culture and use his own language. Since the existence of separate cultures and languages were what defined minorities, he would appreciate some clarification.

82. Mr. DHAKAL (Nepal) assured the Committee that replies would be forthcoming to the various points raised. In view of the number of references to the caste system, he wished to make it clear that such a system did not exist in Nepal.

The meeting rose at 5.45 p.m.